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November 17, 2000

Magalie Roman Salas, Secretary  
Federal Communications Commission  
Counter TW-A325  
The Portals, 445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Ex Parte Submission of Northpoint Technology, Ltd.  
ET Docket No. 98-206, RM-9147, RM-9245

Dear Ms. Salas:

Northpoint Technology, Ltd. ("Northpoint") would like to correct certain errors and false impressions conveyed in the "Request for Filing Window and Auction Procedure" filed by the National Rural Telecommunications Cooperative ("NRTC") in its *ex parte* submission of September 21, 2000 (the "NRTC Filing").

NRTC is right on the money when it states that Northpoint's technology and the services that affiliates of BroadwaveUSA (the "Broadwave Affiliates") intend to provide by means of this technology will have "broad public service implications."<sup>1</sup> These implications are especially significant for NRTC's constituents: residents of rural areas. Indeed, because of cost and profit factors, providers of Direct Broadcast Satellite Service ("DBS") do not intend to provide local broadcast signals by satellite to residents of rural America. They have, in fact, filed suit against the United States seeking relief from the obligations imposed on them by the Satellite Home Viewer Improvement Act of 1999.<sup>2</sup> Thus, Northpoint

<sup>1</sup> NRTC Filing at 4.

<sup>2</sup> See Satellite Broadcasting & Communications Association of America, EchoStar Communications Corporation and Dish Ltd., DirecTV Enterprises, Inc. et. al. v. Federal Communications Commission et. al., "Complaint for  
(continued...)

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may be the last, best hope for the delivery of local broadcast signals to far-flung residents in rural markets that are unserved by cable. The Broadwave Affiliates have pledged to provide *all* local television signals in *all* markets where they provide service. However, rather than embracing Northpoint for the benefits that would accrue to its rural constituency, NRTC urges the Commission to delay or prevent Northpoint service.

The Commission must remember that NRTC invested more than \$100 million in DirecTV and that NRTC provides DirecTV service to more than 1.6 million rural customers.<sup>3</sup> Thus, NRTC has an obvious interest in forestalling competition to DirecTV.<sup>4</sup> NRTC's arguments attempt to hide self-serving intent within a veil of seemingly high-minded language which requires a bit of translation.

- NRTC urges the Commission to seek maximum value from the Ku Band spectrum by setting applications for terrestrial service in the band for auctions open to any bidder. This translates to a request for the Commission to impose a financial burden on new competitors that would put them at a disadvantage to NRTC's partner, DirecTV, which did not need to purchase its spectrum through competitive bidding.
- NRTC claims controversy with regard to possible interference problems with DBS operators arising from Northpoint's testing. NRTC omits the

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<sup>2</sup> (...continued)  
Declaratory and Injunctive Relief," filed with the U.S. District Court for the Eastern District of Virginia on September 20, 2000.

<sup>3</sup> See NRTC's web site: <http://www.nrtc.org/navigate.cfm?page=DIRECTV>, visited November 8, 2000.

<sup>4</sup> Indeed, one of NRTC's largest members, Pegasus Communications Corporation, has filed an application seeking authority to provide terrestrial services in the 12.2 - 12.7 GHz band as a transparently anticompetitive attempt to block the expeditious introduction of Northpoint's innovative technology. See "Motion to Dismiss" filed by Northpoint on May 23, 2000 and "Reply to Opposition" filed by Northpoint on June 19, 2000.

explanation that only the DBS providers found such potential interference issues while the Commission found no evidence of such a result.<sup>5</sup>

- NRTC would like the Commission to open a new filing window for terrestrial applicants out of “fairness” to all. All who were seriously interested in providing terrestrial service in the Ku Band, however, had ample opportunity to participate in this proceeding at an earlier stage. Only Northpoint has come forward with technology that makes effective terrestrial service possible in the band and only the Broadwave Affiliates have filed applications indicating the authority to implement Northpoint’s proprietary technology.
- NRTC misquotes or misunderstands the language of the Open-Market Reorganization for the Betterment of International Telecommunications (“ORBIT”) Act. It asserts that ORBIT placed a restriction only on the auctioning of “international satellite applications” and that Northpoint’s services would not be “international” in scope. The ORBIT Act, however, prohibits competitive bidding for “any *spectrum used* for global satellite communication services.”<sup>6</sup> Thus, the ORBIT Act prohibitions extend much further than international satellite applications.
- NRTC alleges that Northpoint is seeking something akin to a “pioneer’s preference.” Northpoint, however, is not seeking anything more than equal treatment to that accorded to applicants for satellite service in the same frequency band. Northpoint is unaware of any serious consideration being given to subjecting the NGSO FSS applicants to competitive bidding even prior to enactment of the ORBIT Act. The NGSO and Broadwave applications all seek the same spectrum, were filed at the same time to provide similar – and in some cases, the same – services, and promise to protect DBS operations. They should all receive the same treatment.

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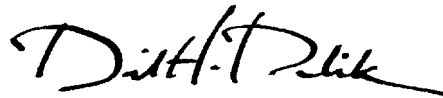
<sup>5</sup> See Report of George R. Dillon of the Commission’s Compliance and Information Bureau dated October 6, 1999, a copy of which has previously been filed in this proceeding, and Diversified Communications Engineering, Inc., Experimental Radio Station WA2XMY, 15 FCC Rcd 2547 (Memorandum Report and Order, 2000).

<sup>6</sup> P.L. 106-180, § 647 (March 17, 2000) (emphasis added).

Although NRTC recognizes the significant public benefits to Northpoint's technology and its plans for implementation,<sup>7</sup> the organization fails to realize that none of these benefits would exist without the expedient grant of the Broadwave applications. Instead of furthering important public policy goals, NRTC's suggestions would have the effect of delaying or even preventing Northpoint's provision of services in competition with cable and DBS operators (including NRTC).

An original and six copies of this letter are submitted for inclusion in the public record for the above-captioned proceedings. Please direct any questions concerning this submission to the undersigned.

Sincerely,



David H. Pawlik  
Counsel to Northpoint Technology, Ltd.

cc: Chairman William Kennard  
Commissioner Susan Ness  
Commissioner Harold Furchtgott-Roth  
Commissioner Michael Powell  
Commissioner Gloria Tristani  
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Kathleen Ham  
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<sup>7</sup> NRTC Filing at 4.